

Manishigian 19269

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE:

DATE: August 23, 1982

MATTER OF: 207607

See Clear Maintenance Corp.

DIGEST:

1. When a bidder requests permission to correct a mistake in its bid and correction would result in displacing the low bid, correction is not permitted unless the existence of the mistake and the bid actually intended are ascertainable substantially from the invitation and the bid itself.
2. In the event of a discrepancy between unit prices and extended prices, where the bid would be low only if the extended prices governed, the unit prices may not be corrected downward to be consistent with the extended prices unless it can reasonably be ascertained from the bid itself that the extended prices actually were intended.

See Clear Maintenance Corp. protests the proposed award of a contract to Custodial Guidance Systems, Inc. to furnish janitorial and elevator operator services at the Federal Building in Brooklyn, New York, under General Services Administration (GSA) invitation for bids (IFB) No. 2PPB-DS-24094. See Clear, the second lowest bidder, requests permission to correct its bid, which would result in the displacement of Custodial's low bid. There is a discrepancy between See Clear's monthly (unit) price and the total price for the contract. We deny the protest.

The solicitation called for a monthly price for a six-month contract period as well as for a six-month option period. Award was to be based on the low total bid for base and option service, as determined by the contracting officer after extending the monthly prices--extended prices were not solicited. See Clear entered on its bid in the appropriate place a monthly

price of \$78,830 for the initial six-month contract period. Just above the monthly price, See Clear wrote the figure \$448,980, evidently the extended price for the six-month period. However, six times \$78,830 does not equal \$448,980. Rather, six times \$74,830 would equal \$448,980. For the option period, See Clear bid \$79,830 per month, and also entered on the form an extended price of \$478,980, which is the correct result of six times the monthly price.

Custodial's total price was \$945,630 for the year. See Clear's total price, determined by extending the monthly prices actually entered, was \$957,560.

See Clear claims that its secretary, who had prepared the bid mistakenly entered the bid price of \$78,830 per month for the initial period, instead of the intended bid price of \$74,830. See Clear claims that the total bid price for evaluation purposes therefore should be \$927,960, the total of \$448,980 and \$478,980. See Clear contends that the evidence is clear that \$927,960 was its intended bid because the bid bond accompanying the bid was based on a total bid of \$927,960.

GSA reviewed See Clear's workpapers in response to the protest. GSA reports that based on that review it believes that See Clear indeed entered a mistaken monthly price for the initial six-month period, and that the extended price of \$448,980 was the bid actually intended for the base period. GSA therefore believes that See Clear should be permitted to correct its bid to make the monthly price for the base period consistent with the extended price that See Clear voluntarily entered on the bid form. We do not agree.

We first point out that GSA's use of See Clear's workpapers to establish the allegedly intended price was improper. When a bidder requests permission to correct a mistake in the bid and such correction would result in displacing a lower bid, correction cannot be permitted unless the existence of the mistake and the bid actually intended are ascertainable substantially from the bid itself, without resort to the bidder's worksheets. Federal Procurement Regulations (FPR) § 1-2.406-3(a)(3) (1964 ed.).

In deciding cases involving bid corrections which would displace the low bidder, we generally have examined the degree to which the asserted correct bid is the only reasonable interpretation, ascertainable substantially from the bid itself, of the claimed mistake. For instance, we have denied correction where there was no way to tell from the bid whether a unit price or its discrepant total was correct and either would have been reasonable. Broken Lance Enterprises, Inc., 57 Comp. Gen. 410 (1978), 78-1 CPD 279. Conversely, we have permitted correction of a unit price to correspond to an extended total where the total price represented the only reasonable alternative. See East Day Auto Supply, Inc., B-192012, September 5, 1978, 78-2 CPD 170.

Here, both the monthly price actually entered for the base period--\$78,830--and the allegedly intended monthly price--\$74,830--certainly are reasonable. We note that a monthly price of \$78,830 also is reasonable compared to the monthly option period price of \$79,830. The only evidence in the bid that possibly can support See Clear's claim is the bid bond.

We have, in fact, considered the amount of a bid bond or bid deposit as one factor in determining whether the error occurred in the unit or total price. For example, in B-158827, April 13, 1966, the sole bidder offered \$.236 per pound for 240,000 pounds of bone and meat trimmings, which when extended should have totaled \$56,640. However, the bidder had entered a total price of \$5,664, one-tenth that amount, and had submitted a bid deposit of \$1,132.80, which was precisely the required 20 percent of \$5,664. Under these circumstances, we concluded that an obvious decimal point error had occurred in the unit price, and permitted modification of the contract to reflect an intended unit price of \$.0236, in lieu of \$.236. In Monmouth Painting Co., Inc., B-183422, July 9, 1975, 75-2 CPD 23, however, the amount of the bid bond was not persuasive because there was not as precise a relationship between that amount and the claimed price.

We are not inclined to permit correction here for a number of reasons.

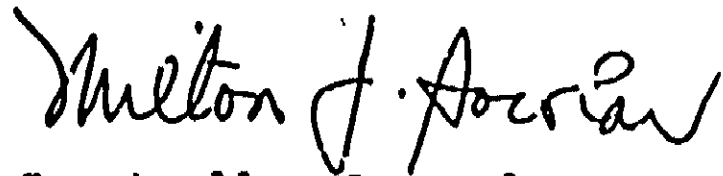
Initially, we view it as important that the extended prices that See Clear would have the Government rely on were not solicited. As stated above, the IFB requested only that bidders insert monthly prices and, while See Clear did so, it simply also entered apparent six-month extensions in blank spaces in the bidding schedule over the monthly entries. We believe that a bidder that makes an extraneous entry in the bid and then claims that entry as the intended bid price should bear a particularly difficult burden to show that the solicited, reasonable prices were mistaken and that the low bidder thus should be displaced.

Also, See Clear's bond is incorrect on its face. The IFB requires a bid bond of five percent of the total bid. Therefore, See Clear's bond should have been approximately \$47,000 if its alleged intended total price was \$927,960. See Clear's bond, however, itself is in an amount not to exceed \$927,960, the full amount of the alleged intended bid. On its face, therefore, the bond can support a bid of over \$18 million. Further, the copy of the bid bond furnished to our Office shows some problem in entering the figure \$927,960--there appears to have been another figure in the same space over which "\$927,960" was written.

We recognize that the indication that See Clear's bond is not to exceed \$927,960, rather than a lesser figure, almost assuredly is in error, and we are not in a position to determine the precise substance of the other matter noted. Nonetheless, the fact that there was at least one error in the bond, and an apparent problem in otherwise completing it, logically suggests to us that there may have been another error. That is, See Clear in fact may have intended the bid bond itself to support a bid of \$951,960, but merely carried over its own mistake in extending the monthly price actually entered on the bidding schedule. Thus, the mistake really might have been that while the monthly price entered--\$78,830--was correct the uninvited extension was wrong, and that error was carried onto the bid bond. In this circumstance, we are not inclined to accept an incorrectly completed bid bond as adequate evidence that the extended price was the intended bid so that the low bidder should be displaced, where the unit price entered is reasonable.

Finally, we point out that a bidder does not necessarily have to submit a bid bond for the full amount of the bid in order for the bid to be responsive. The insufficiency of a bid bond can be waived if no other bids are received or if the guarantee submitted is equal to or greater than the difference between the low bid price and the price stated in the next higher acceptable bid. FPR § 1-10.103-4. While the intentional submission of an insufficient bid bond may be a rare bidding practice, we believe that this possibility simply adds to the burden of a claimant seeking to displace the low bidder and using the bid bond as the sole evidence of its mistake.

In view of the above considerations, we believe that the integrity of the competitive procurement system precludes allowing See Clear to correct its bid. The protest therefore is denied, and award should be made to Custodial, the low bidder, if otherwise appropriate.



Acting Comptroller General
of the United States